

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, California 95110-1795

Hearing Date/Agenda Number
P.C. 04-23-03 Item: 4.a.

File Number
PD02-061

Application Type
Appeal of Planned Development Permit

Council District
3

Planning Area
Central

Assessor's Parcel Number(s)
259-05-024, -025, -026

STAFF REPORT

PROJECT DESCRIPTION

Completed by: Akoni Danielsen

Location: Southeast corner of Miller and Asbury Streets.

Gross Acreage: 0.89

Net Acreage: 0.89

Net Density: 75 DU/AC

Existing Zoning: A(PD) Planned Development

Existing Use: Residential, office, vacant

Proposed Zoning: No change

Proposed Use: a mixed use project consisting of up to 67 attached dwelling units and 6,600 sq.ft. of groundfloor commercial uses

GENERAL PLAN

Completed by: AD

Land Use/Transportation Diagram Designation
Transit Corridor Residential

Project Conformance:
☒ Yes ☐ No
☒ See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: AD

North: Office, Residential

CG Commercial, R-2 Residence

East: Office

CO Commercial, A(PD)

South: Office

CG Commercial

West: Office, Residential

CO Commercial, R-2 Residence

ENVIRONMENTAL STATUS

Completed by: AD

☐ Environmental Impact Report certified
☐ Negative Declaration circulated on
☒ Negative Declaration adopted on November 14, 2001

☐ Exempt
☐ Environmental Review Incomplete

FILE HISTORY

Completed by: AD

Annexation Title: Original City

Date: March 27, 1850

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

☐ Approval
☒ Uphold Director's decision
☐ Denial

Date: _____

Approved by: _____
☐ Action
☒ Recommendation

APPLICANT/OWNER

APPELLANT

Barry Swenson, Builder
675 North First Street, 5th Floor
San Jose, CA 95112

Nina Boyd
1120 Koch Lane
San Jose, CA 95125

Department of Public Works

See conditions of approval of PD02-061

Other Departments and Agencies

See conditions of approval of PD02-061.

GENERAL CORRESPONDENCE

See Notice of Permit Appeal dated 3/24/03 and related correspondence dated 3/20/03 submitted by appellant.

See letter from Applicant dated 4/1/03.

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

On May 7, 2002 the City Council approved a Planned Development rezoning (File No. PDC00-086) for up to 400 attached residential units and 7,000 square feet of commercial uses in four towers up to 150 feet in height, and an associated parking garage, on a 2.80 gross acre site located on the block bounded by North First, Taylor, Miller, and Asbury Streets. On January 21, 2003 the City Council approved a Planned Development rezoning (File No. PDC02-089) to allow for an increase of 11,000 square feet of ground floor commercial space to the original project.

On March 12, 2003 the Director of Planning approved permits for the first phase of development in conformance with the subject property's Planned Development zoning. Planned Development Permit File No. PD02-061 allows a mixed use project consisting of up to 67 attached dwelling units and 6,600 sq.ft. of groundfloor commercial uses in the first of four towers to eventually be built on the subject block. Tentative Condominium Map File No. PT02-101 allows the consolidation of 6 existing parcels into one condominium lot for residential and commercial uses. The first phase of Taylor Towers would be built on the resulting new parcel, and under the condominium map, commercial and residential unit air spaces could be sold to individual interests.

On March 21 and March 24, respectively, Nina Boyd, an owner of property on the east side of North First Street directly east of the subject block, appealed PD02-061 and PT02-101. A copy of the PD permit appeal is attached. Title 20 of the SJMC requires appeals of PD permits to be considered by the Planning Commission. The appeal of the Director's decision on Tentative Maps is considered by the City council in accordance with Section 19.12.230 of the San Jose Municipal Code (Subdivision Ordinance) and the Subdivision Map Act. Section 19.40.070 of the SJMC requires that tentative maps based upon a Planned Development zoning cannot be approved by the Director, or City Council on appeal, until the associated Planned Development permit has been approved.

Following the Planning Commission's consideration of PD Permit PD02-061 on April 23, the City Council is scheduled to hear the appeal of the Tentative Condominium Map PT02-101 on April 29. A supplemental memo describing the Planning Commission's action on the PD Permit appeal will be sent to the City Council.

Existing uses on the subject block include residential, office, and surface parking. The subject site is surrounded primarily by office uses to the north, south, east and west. The site is a block south of the Civic Center and three blocks west of the Japantown Business District. The Vendome residential neighborhood is located to the southwest of the project site.

The project fronts onto the Guadalupe Transit-Oriented Development Corridor. The Guadalupe Corridor is the

first light rail transit line completed in the County. It consists of 20 miles of rail and a series of stations extending from Tasman Drive in the North San Jose/Santa Clara industrial area south along North First Street to the Downtown transit mall. The line continues south along Highways 87 and 85 to its southernmost stations located at the intersection of Coleman Avenue and Winfield Boulevard. The Guadalupe Corridor is part of a multi-modal transportation system that combines light rail with a freeway and incorporates bicycle lanes along portions of its right-of-way. The project would be the first high-rise, transit-oriented residential development since completion of the Guadalupe Corridor light rail line.

The project is anticipated to be built in several phases, depending upon market demand. The first phase, as approved by the Director of Planning under PD02-061 and PT02-101 and now subject to an appeal, would construct a tower at the corner of Asbury and Miller Streets, supported by an existing parking lot at Taylor and Miller Streets.

The second phase (not covered by subject permit) would place a second tower at the corner of Taylor and Miller Streets. Parking would be provided in a multi-story parking garage accessed from Asbury Street. The garage would be screened from First Street by live/work or retail uses, depending upon market demand.

The third phase (not covered by subject permit) would complete redevelopment of the site, extending the parking garage south to Taylor Street, and placing two towers facing North First Street. This extended garage would also be screened from First and Taylor Streets by live/work or retail uses, depending upon market demand.

Landscaping and recreational uses would be placed on the roof of the garage to serve project residents. The impressive mature Bay tree will be retained and incorporated into the at-grade courtyard facing Miller Street.

ENVIRONMENTAL REVIEW

An Initial Study was prepared for the original Planned Development zoning (PDC00-086) and the Director of Planning adopted a Mitigated Negative Declaration (MND) on November 14, 2001. Mitigation measures were included in the project for biological and cultural resources, geology and soils, hazardous materials, hydrology and water quality, flooding, and noise. The Planning Commission considered the MND before making its recommendation on the project to the City Council. The City Council also considered the MND prior to approval of the project.

The impacts related to the additional 11,000 square feet of ground-floor commercial space proposed with the subsequent rezoning (PDC02-089) were analyzed. The Director of Planning concluded that a subsequent MND was not required because the project did not constitute a significant change to the previously approved project, there would be no new significant impacts and no substantial changes were required to the adopted MND. The adopted findings remained valid with only minor technical changes or additions being necessary. An Addendum to the Mitigated Negative Declaration was prepared for the project. Although the Planned Development permit being considered is a further discretionary approval for the project, it is the same project as approved by the Planned Development rezoning. A subsequent MND is not required because there are no changes to the approved project and there are no substantial changes to the circumstances or new information.

GENERAL PLAN CONFORMANCE

The project is consistent with the San Jose 2020 General Plan Land Use/Transportation Diagram designation of Urban Transit Oriented Development Corridor. This designation, which was initiated and approved on the site by City Council in 1991, is intended to expand the potential for residential development in proximity to major public transit. Development should be high-density residential development of at least 45 DU/AC, with retail and office uses permitted on the first two floors. The project, at full build out of the entire block, provides high density residential development at 143 DU/AC and commercial uses on the ground floor, taking advantage of the numerous transit opportunities along North First Street.

General Plan Urban Design Height Policy allows a maximum building height of 150 feet along the North First Street Transit Corridor, between West Julian and West Hedding Streets, and the proposed building heights of 145 feet are consistent with this policy.

The project is also consistent with several General Plan Major Strategies, such as Growth Management, Housing, and Sustainable City, in that the project makes efficient use of an existing urban infill site by providing high density housing near light rail transit, major transportation corridor and jobs. Additionally, high-density infill housing is an integral component of the Downtown Revitalization Strategy.

ANALYSIS

Planned Development Permit File No. PD02-061 (see attached Permit and plan set) allows a mixed use project consisting of up to 67 attached dwelling units and 6,600 sq.ft. of groundfloor commercial uses in a multi-story tower at the southeast corner of Miller and Asbury Streets. The Director of Planning determined the permit to be in conformance with the General Plan and the Planned Development zoning approved by City Council.

The appellant's letter prepared by their attorney and submitted with the appeal (attached) raises concerns related to the project's environmental review, and the findings Planning staff made with regard to the PD Permit PD02-061 and Tentative Condominium Map PT02-101. The issues related to Tentative Condominium Map PT02-101 will be considered by the City Council on April 29, in accordance the Titles 19 and 20 of the SJMC.

Environmental Review

A Mitigated Negative Declaration (MND) was adopted by the Director of Planning on November 21, 2001, following a 21-day public review and comment period, in compliance with the California Environmental Quality Act (CEQA). The Initial Study on which the MND was based was made available to the public; in fact a copy was provided directly to the appellant during the public review period. The public, including the appellant, did not make any comments or file a protest of the MND during the public review period, and so the Director of Planning adopted the MND at the close of the public review period.

Following adoption, the MND was reviewed and considered at public hearings held by the Planning Commission, and ultimately, the City Council as part of the approval of the Planned Development rezoning for the site. The Planning Director read and considered the MND prior to approving the first phase of development covered by PD Permit PD02-061 and Tentative Condominium Map PT02-101, and concluded the findings made in adopting the MND remain valid. The project includes mitigation measures to reduce all potentially significant environmental impacts to a less than significant level.

The appellant's alleged deficiencies and failures regarding potential soils contamination, noise, traffic, air quality, shade, historic resources, construction impacts, and parking impacts were all considered and addressed with appropriate mitigation measures included in the project as part of the City Council's approval of the site's Planned Development rezoning. The approved Planned Development permit is the mechanism which implements those mitigation measures as development requirements.

Staff will be available at the public hearing April 23rd to clarify specific details related to the project's completed environmental review process. As a practical matter, the subject of the permit appeal, the first phase of development (67 units and 6,600 sq.ft. of commercial) will have only a fraction of the impacts identified and mitigated in the MND covering the redevelopment of the entire block. New environmental review, particularly an environmental impact report, is neither required nor warranted.

Planned Development Permit

The Planned Development Permit process is an opportunity for staff, the applicant, and the community to finalize project details such as architecture, grading, landscaping, and phasing of construction. It is not intended as an opportunity to reconsider land use and development decisions made by the City Council through the Planned Development rezoning process. The PD permit effectuates the zoning and includes any project conditions required or necessary to implement various public policies.

The appellant has been involved in the public review process since the initial Planned Development rezoning from 2000. Even after Planning Commission and City Council consideration, they remain opposed to the project, and the appeals of PD02-061 and PT02-101 are their final administrative remedies prior to litigation. They continue to object to the project's height, massing, density, parking, and traffic. However, these issues are not the subject of any planned development permit including PD02-061. Rather these issues have been considered and found acceptable by the City Council as part of its approval of the Planned Development rezoning.

The appellant argues the environmental impacts of the project will have an unacceptable negative effect on adjacent or surrounding properties. Staff concluded with the MND adopted as part of the Planned Development rezoning for the site that any project impacts would be mitigated to a less than significant level. Additionally, the City Council, in approving the Planned Development rezoning, found the potential impacts on adjacent and surrounding properties acceptable in light of the project's beneficial aspects, and approved the proposed project's height, density, mix of uses, parking requirements, and setbacks. The PD Permit finalizes the project architecture, landscaping, and other details, within the zoning development standards approved by City Council.

The appellant claims the cash-strapped plight of the Valley Transportation Authority calls into question the project's reliance on public transit. Per the Zoning Code, the City Council granted the project a 10% reduction in parking based upon the site's proximity to light rail and numerous bus routes. While VTA has scaled back service on some routes, the basic infrastructure, in particular the light rail line, remains to serve the development, as does the Zoning Code provision allowing a 10% parking reduction. VTA continues to support the project, and project residents are anticipated to take advantage of the numerous transit opportunities along North First Street in close proximity to the site.

The appellant also argues that the development is incompatible with the surrounding patterns and types of land use due to its scale and design. To the contrary, the City of San Jose has been anticipating this type and scale of development on the subject block since 1991. The project is the right match of construction type to site location because the project responds to the existing scale of development in the Civic Center Area between Taylor and Hedding Streets, and is isolated on its own block and separated from existing lower scale neighborhoods by North First and Taylor Streets, both large commercial arterial streets.

Conclusion

The project presents an opportunity for a model transit-oriented development project that will reduce traffic congestion and air pollution. The proposed high density housing takes advantage of the light rail line, and in turn reinforces the viability and efficiency of the light rail line by placing residents in a position to realistically use it. It also a pioneering effort at high-rise residential construction, a new form of development in San Jose that incorporates smart growth principles.

COMMUNITY OUTREACH

A public hearing notice for the project appeal was published in a local newspaper and mailed to all property owners and tenants within 1000 feet of the subject site.

RECOMMENDATION

Planning staff recommends the Planning Commission adopt a resolution upholding the Planning Director's decision to approve Planned Development Permit PD02-061 for the following reasons:

1. The proposed development conforms to the subject site's General Plan Land Use Diagram Designation of Urban Transit Oriented Development Corridor.
2. The proposed development will further the goals and policies of the General Plan's Housing Strategy by providing high-density infill housing in close proximity to transit and commercial/retail opportunities.
3. The proposed project conforms to the subject site's Planned Development zoning.
4. The proposed project conforms to the Subdivision Map Act.
5. The project conforms to Council Policy 6-24, Evaluation Criteria for High Density Housing near Rail Transit.
6. The proposed project conforms to the applicable Residential Design Guidelines.

ATTACHMENTS

PD02-061, Planned Development Permit and plan set

Permit Appeal by Nina Boyd and Letter dated 3/20/03 by Boyd's attorney Christine Griffith

C: Jessie Hall, Barry Swenson Builder, 675 North First Street, 5th Floor, San Jose, CA 95112
Appellant
Christine Griffith, Stoel Rives LLP, 111 Sutter Street, Ste 700, San Francisco, CA 94104